

Application No. 10/520,275
Amdt. Dated: Dec-24-2008
Reply to Office Action of Aug-28-2008

5

REMARKS/ARGUMENTS

Petition is hereby made under the provisions of 37 CFR 1.136(a) for an extension of one month of the period for response to the Office Action. Authorization to charge the prescribed fee to our deposit account is enclosed.

Claim 5 has been rewritten in independent form, incorporating the limitations of claim 1, with claim 1 being deleted. Claims 2 to 4 have been made dependent on claim 5. All other claims are dependent, directly or indirectly, on claim 5.

Claim 5 defines a snack food product comprising a shaped core of a coherent mass of scrambled eggs enrobed in an outer batter coating. The shaped core has structural integrity provided by the presence therein of a food grade binder consisting essentially of liquid albumen and gelatin. It is submitted, for the reasons set forth herein, that this subject matter is not disclosed or suggested by the cited prior art.

The Examiner maintained rejection of claims 1, 2, 5 to 7 and 17 under 35 USC 102(b) as being anticipated by Pickford (USP 6,261,625). The Examiner indicates that the rejection was made on the basis set forth in Paragraph 7 of the Office Action of December 18, 2007. Reconsideration is requested having regard to the amended form of the claims and the remarks herein.,

As previously submitted, the Pickford reference is concerned with the provision of microwaveable food products which comprise substrate foodstuff impregnated with a stabilizer composition adapted to increase in viscosity when irradiated in a microwave oven. As specified in col. 1, ll 10 to 13, the foodstuff may comprise a core and coating surrounding the core, and may be a battered or breaded product.

As specified in col. 2 of Pickford, the stabilizer composition comprises a reversibly thermogelling, water binding combination of starches, gums and

Application No. 10/520,275
Amdt. Dated: Dec-24-2008
Reply to Office Action of Aug-28-2008

6

optionally proteins. Preferred compositions include cellulose gum, hydrocolloid and protein isolate. It is apparent, therefore, that the reference employs combinations of materials formulated to provide the viscosity increase upon microwaving.

The Examiner referred specifically to Examples 6 and 14. Example 6 describes a composition comprising cellulose gum, modified starch, xanthan gum, egg albumen and pea starch which may be added to a substrate as a dry powder. It is stated that the composition of Example 6 as well as Example 5 can be used "for microwaveable coated scrambled egg products", but no detail is given as to such "scrambled egg products".

Example 14 describes the provision of a Breakfast Brunch Bar. As described therein, the stabilizer of Example 5, comprising vital wheat gluten, pectin and whole milk powder, is mixed with water in a high shear mixer. Pasteurized scrambled egg is placed in a tumble mixer and the stabilizer mixture added to it. Tumbling is continued and the stabilizer of Example 6 is added together with the polydextrose and cooked bacon. The mixture was tumbled until it stiffened, chilled, and formed into shape for coating. However, the product is not coated.

With respect to claims 5 to 7, while the reference generally describes liquid albumen and gelatin as stabilizer components, there is no disclosure of the use of such materials in combination and in combination with scrambled eggs to provide structural integrity to the scrambled egg core of the snack food products. In addition, it will be noted that claim 5 utilizes "consisting essentially of " language in relation to the liquid albumen and gelatin.

In the Final Action, the Examiner stated that:

"Applicant's remarks with respect to Pickford are completely without merit. Example 6 of Pickford discloses a coated scrambled egg product and provides an example of coating, which just happens to be a batter as a result of presence of starch and binder therein."

Application No. 10/520,275
Amdt. Dated: Dec-24-2008
Reply to Office Action of Aug-28-2008

7

The stabilizer composition of Example 6, comprising cellulose gum, modified starch, xanthan gum, egg albumen and pea starch, may be added to a substrate as a dry powder.

As stated in Pickford:

"The stabilizer compositions of Examples 5 and 6 in combination are effective when used with dairy products such as cheese either alone or in fills such as chicken Kiev. In addition these compositions may be used for microwaveable coated scrambled egg products."

The compositions of Examples 5 and 6 are stabilizer compositions intended to be added to substrate foodstuffs. In connection with the mention of scrambled eggs in the above quotation, clearly, it is intended that the material be added to scrambled eggs.

The reference does not disclose that the composition in Examples 5 and 6 is intended to be coating materials, despite the presence of starch and other components. However, it is agreed with the Examiner that col. 1, lines 10 to 13 disclose that the core products in Pickford are coated with a batter. The reference does not disclose the specific combination of egg albumen and gelatin as a binder for the scrambled egg, as defined in amended claim 5.

In the Final Action, the Examiner also mentions Example 14 of Pickford:

"Additionally, Example 14 of Pickford discloses a scrambled egg product that is shaped for coating thereby making it inherent that a coated scrambled egg product is well known. Again, the coating is a batter, as explained in col. 1, lines 10 to 13."

The product of Example 14 utilizes the stabilizers of both Examples 5 and 6 together with polydextrose. It is submitted that such combination does not disclose or suggest the specific combination consisting essentially of the stabilizers now specified in claim 5.

Application No. 10/520,275
Amdt. Dated: Dec-24-2008
Reply to Office Action of Aug-28-2008

8

Accordingly, it is submitted that claims 1, 2, 5 to 7, 15 and 17, insofar as they remain in the application in the amended form, are not anticipated by the prior art and hence the rejection thereof under 35 USC 102(b) as being anticipated by Pickford, should be withdrawn.

The Examiner again rejected claims 3, 4, 8 to 14 and 16 under 35 USC 103(a) as being unpatentable over Pickford in view of Rapp et al (USP 4,469,708) as set forth in paragraph 10 of the previous Office Action. Reconsideration is requested having regard to the amended form of the claims and the remarks herein.

As discussed above, claim 5, the only independent claim, is limited to the specific combination of egg albumen and gelatin as stabilizer for the scrambled egg core, not found in Pickford. It is submitted that the Rapp et al reference does not remedy this defect.

The Rapp et al reference does not produce scrambled eggs but rather the reference describes a freeze-thaw stable egg product and a process of preparing the product. Essential to the applicants invention is that the shaped core is formed by scrambling eggs. The term "scrambled eggs" refers to eggs cooked by a particular method (scrambling) in which egg yolks and whites are mixed together, optionally along with milk, and cooked while stirring.

By way of contrast, the product disclosed in Rapp et al comprises discrete pieces of egg bound together and covered with a batter coating. As clearly described in col. 2, ll 16 to 21 of Rapp, the freeze-thaw stabilized egg product internally has the "appearance of scrambled eggs". Nowhere in the reference is there described a product which is scrambled eggs.

As indicated by the Examiner, in the procedure described in Rapp et al, an egg mixture and water-binding carbohydrates are cooked sufficiently to coagulate the albumen content of the egg. The carbohydrates are used in sufficient quantity effective to render the eggs freeze-thaw stable when cooked. The cooked

Application No. 10/520,275
Amdt. Dated: Dec-24-2008
Reply to Office Action of Aug-28-2008

9

egg mixture then is subdivided into discrete pieces, the discrete pieces are coated with a binder in an amount effective to hold the discrete pieces together, and the binder-coated discrete pieces formed into a desired portion. The desired portion then is coated with batter.

In the Final Action, the Examiner states:

"Although Rapp et al may not produce scrambled egg products per se. as applicant contends, Rapp et al is merely applied as a secondary reference, as explained in paragraph No. 9 of Paper No. 20071218, as in analogous to and properly combinable with Pickford as both relate to preparation of egg products.."

It is agreed with the Examiner that Rapp et al described the preparation of an egg product and, from that perspective, both references can be considered to be analogous art. Nevertheless, the Rapp et al reference does not describe the specific combination of food grade binders defined in claim 5.

Accordingly, it is submitted that claims 3, 4, 8 to 14 and 16 are patentable over the applied combination of prior art. Accordingly, it is submitted that these claims are not open to rejection under 35 USC 103(a) as being unpatentable over Pickford in view of Rapp et al and the rejection should be withdrawn.

The Examiner maintained rejection of claims 18 and 19 under 35 USC 103(a) as being unpatentable over Pickford in view of Pilgrim et al and Scheideler et al as set forth in Paragraph 10 of the prior Office Action. Reconsideration is requested having regard to the amended form of the claims and the remarks herein.

Claims 18 and 19 relate to presence of added omega-3 fatty acid in the scrambled egg. In the Final Action, the Examiner states:

"Lastly, although Pickford does not include omega-3 fatty acids, as applicant argues, Pilgrim et al and Scheideler et al clearly recognize the benefits of including omega-3 fatty acids in egg products, e.g. scrambled egg products, and thus render it obvious to the skilled artisan to prepare such egg products with

Application No. 10/520,275
Amdt. Dated: Dec-24-2008
Reply to Office Action of Aug-28-2008

10


the added benefits obtained from the presence of omega-3 fatty acids.."

The applicants rely for the patentability of claims 18 and 19 on their dependence on claim 5. The Pilgrim and Scheideler references are relied on solely for the purposes stated above by the Examiner and do not remedy the basis defect of Pickford as a reference.

Accordingly, it is submitted that the claims are patentable over the applied combination of Pickford in view of Pilgrim and Scheideler et al and hence the rejection thereof under 35 USC 103(a) over the combination of prior art, should be withdrawn.

It is believed that this application is now in condition for allowance and early and favourable consideration and allowance are respectfully solicited.

Respectfully submitted,



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